

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8207 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AMARBHAI KANJIBHAI NAYAK

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner before this Court challenges the order of preventive detention dated 27th August, 1998 made by the Commissioner of Police, Ahmedabad City under the powers conferred upon him under Sub-section 1 of

Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The grounds of detention suggests that an offence for violation of prohibition law has been registered against the petitioner on 24th August, 1998 and on two occasions, the petitioner was found to be carrying liquor and acted in a manner prejudicial to the maintenance of public order. The petitioner is, therefore, considered to be a bootlegger within the meaning of Sec. 2 (b) of the Act and his activities are considered to be prejudicial to the maintenance of public order.

4. The impugned order of detention has been challenged by the learned advocate Ms. Kachhavah on the grounds : (a) the representation made against the order of detention was not expeditiously considered and decided; (b) the Detaining Authority has not taken into consideration the fact of the petitioner having been taken in judicial custody pursuant to the offence registered against him on 24th August, 1998 and the fact that petitioner had not applied for release on bail, the order of detention, is therefore, vitiated on account of non-application of mind; (c) the detention order refers to the associates of the petitioner whose names and identity are not disclosed in the grounds of detention; (d) the Detaining Authority has relied upon the statements of witnesses without verifying the genuineness of such statements or ascertaining the need to claim privilege under Section 9 (2) of the Act; (e) in any view of the matter, even if the petitioner were held to be a bootlegger, it may be a problem of law and order, the same cannot be said to be detrimental to the maintenance of public order. In support of her contention, Ms. Kachhava has relied upon the judgment of this Court in the matter of Amrat Ramabhai Vaghari v. Commissioner of Police, Ahmedabad City & Ors. [1995 (2) GLH 874] and in the matter of Abdul Aji Abdul Majid Shaikh v. The Commissioner of Police, Ahmedabad City & Ors. [Special Criminal Application No. 913 of 1994, decided on 19.1.1995 :: Coram :- Hon'ble Messrs. Justice K.J Vaidya & S.D Dave] and of Rajendra Bachubhai Rathod v. Commissioner of Police, Ahmedabad City & Ors. [Special Civil Application No. 3879 of 1996, decided on 4.1.1996 :: Coram : Mr. Justice M.R Calla] and of Siraz Samsuddin Mansuri (Kazi) v. The Commissioner of Police, Ahmedabad City & Ors. [Special Criminal Application No. 1000 of 1993, decided on 10-12-1993 : Coram :- Messrs. Justice S.D Dave & S.M Soni].

5. In the matter of Amrat Ramabhai Vaghari (Supra), this Court relying upon the judgment of the Hon'ble Supreme Court in the matter of Piyush Kantilal Mehta [AIR (1989) SC 491] and of Mustak Miya Zabbar Miya Shaikh {1995 3 SCC 237} has held that the bootlegging activities of a person in itself cannot be said to be prejudicial to the maintenance of public order and the order of detention based on such activities alone may not be sustained. In the matter of Piyush Kantilal Mehta (Supra), the Hon'ble Supreme Court considering the relevant provisions of the Act, in paragraph 12 of the judgment, held that, 'the bootlegger or a dangerous person or a drug trafficker shall be deemed to be acting in a manner prejudicial to the maintenance of public order when the activities of such a person affects adversely or are likely to affect adversely, the maintenance of public order. In other words, sub-section 4 of the Act contains a deeming provision, such a deeming provision will not be attracted unless the activities of a person concerned affects adversely or likely to affect adversely the maintenance of public order.' The same is the view expressed by the Hon'ble Supreme Court in the matter of Mustak Miya Shaikh, referred to hereinabove.

6. The said two judgments have since been distinguished by the Hon'ble Supreme Court in the matter of Kanuji S Zala [1999 (5) Supreme 364]. The Hon'ble Supreme Court has held that the decisions in the matter of Piyush Kantilal Mehta and other two judgments of the Hon'ble Supreme Court referred to therein were decided on the facts of the said cases. The Court further held that, 'what is required to be considered in such cases is whether there was credible material before the Detaining Authority on the basis of which reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well-settled that whether the material was sufficient or not is not for the Court to decide by applying an objective test as it is a matter of subjective satisfaction of the Detaining Authority.' The judgment in the matter of Piyush Kantilal Mehta (Supra) has been followed by this Court in the matter of Amrat Vaghari (Supra), Rajendra Bachubhai Rathod (Supra), and Abdul Ajij Abdul Majid Shaikh (Supra) relied upon by the learned advocate.

7. The petition has been contested by the learned AGP Ms. Punani. She has relied upon the affidavits made by the Detaining Authority and the State Government. She has submitted that the representations made against the impugned order of detention were promptly attended to and

decided expeditiously. She has further submitted that while making the order of detention, the Detaining Authority was alive to the fact that the petitioner was taken to the judicial custody in respect of the offence registered against him and he continued to be in judicial custody. This is reflected in the order of detention also. In support of her contentions, she has relied upon the judgment of this Court in the matter of Bhikhabhai Thakorbhai Patel v. Commissioner of Police, Surat & Ors. [1989 (2) GLH 420]. Relying upon the said judgment, she has submitted that it is not the solitary offence registered against the petitioner which has been taken into consideration. Further information was received by the concerned authorities in the form of the statements made by the witnesses. The said statements do reveal that the activities of the petitioner were detrimental to the maintenance of public order. She has also submitted that the Detaining Authority had duly considered the credibility of the witnesses and the genuineness of the statements made by them. The order of detention, therefore, does not warrant inference at the hands of this Court.

8. In the matter of Bhikhabhai Thakorbhai Patel (Supra), on facts, the Court found that the detenu was running a liquor den in public. On the basis of statements of the witnesses, it was found that the witness was hit by the detenu which caused apprehension in the mind of the public gathered there, disturbing the public order. Considering the incident narrated by the witness, coupled with the bootlegging activities, the Court held that the activities of the detenu were prejudicial to the maintenance of public order.

9. Upon perusal of the records and the affidavits made by the respondents-authorities, I find that the representations made against the impugned order of detention by the learned advocate for the petitioner to the Detaining Authority and the State Government were both attended to with promptitude. Both the representations have been considered and decided without any delay. The decision has also been communicated to the petitioner immediately. Further, the Detaining Authority was alive to the fact that the petitioner had been taken in judicial custody and on the date of the decision, he was still in judicial custody in respect of the offence registered against him. The said fact has been reiterated by the Detaining Authority in his affidavit also. The statements of witnesses were recorded on 25th August, 1998 and have been personally verified by the Detaining Authority on 27th August, 1998.

The Detaining Authority has also categorically asserted that he was satisfied about the genuineness of the statements made by the witnesses. As regards name and address and other particulars of the associates of the petitioner, referred to in the order of detention, it appears that the name of the associate/accomplice of the petitioner is disclosed in the FIR lodged against him, a copy of which has been supplied to the petitioner. It, therefore, cannot be said that the petitioner has not been made aware of the name and other particulars of his associate, referred to in the order of detention. Further, there is nothing on the record to show that the witness had referred to any particular person as the associate of the petitioner at the time of the incident in question. The non-disclosure of particulars of a person whose identity is not known to the concerned authorities would not vitiate the order of detention.

10. This takes me to the question whether the activities of the petitioner can be said to be prejudicial to the maintenance of public order. It is true that the solitary incident of violation of prohibition law would not be a problem to the maintenance of public order and for such solitary incident, no person can be detained under the Act. As held in the matters of Mustak Miya Shaikh (Supra) and Piyush Kantilal Mehta (Supra) and the other judgments relied upon by the learned advocate, it is evident that the Detaining Authority is bound to satisfy itself that in addition to bootlegging activities, such activities also adversely or are likely to adversely affect the public order within the meaning of sub-section 4 of Section 3 of the Act. The offence registered against the petitioner reveals that the petitioner was carrying liquor in large quantity in violation of the prohibition law. In addition to the said offence registered against the petitioner, the incident narrated by the two witnesses also disclose that the petitioner was carrying liquor in large quantity and that his activities at the moment had caused breach of public order. The petitioner had not only beaten the witness in public place, he had also administered threats to the public gathered at the spot of incident, creating fear in the minds of the members of public, causing breach of public tranquillity and even tempo of life.

11. The cumulative effect of the offence registered against the petitioner and the two incidents narrated by the witnesses is undoubtedly that of anti-social activities carried on by the petitioner which is detrimental to the maintenance of public order.

12. In above view of the matter, the order of detention made against the petitioner cannot be said to be illegal or bad. The petition is, therefore, dismissed. Rule is discharged.

Prakash*